IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

ST.Rev..No. 175 of 2007

(ORDER DATED 30-10-2006 IN TA.54/2006 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE)

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REVISION PETITIONER/ APPELLANT/ ASSESSEE:

NISHA MURALI,
PROPRIETOR, M/S.MAHARAJA WOOD INDUSTRIES,
CALICUT.

BY ADV. DR.K.B.MOHAMEDKUTTY (SR)
SRI.K.M.FIROZ

RESPONDENT/ RESPONDENT/ REVENUE:

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.175 of 2007

Dated, this the 26th day of October, 2007

ORDER

H.L.Dattu, C.J.

A dealer, registered under the provisions of the Kerala General Sales Tax Act, 1963 ('the Act' for short) is before us, inter alia, questioning the legality or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal ('the Tribunal' for short) in T.A.No.54 of 2006 dated 30th October, 2006. By the impugned order, the Tribunal has sustained the orders passed by the assessing authority dated 12.5.2005 and the orders passed by the first appellate authority dated 22.3.2006.

(2) The facts in brief are: The assessee is a dealer registered under the provisions of the Act. He is engaged in the manufacture of furniture. The assessing authority had completed the assessment for the assessment year 2000-01 under Section 17(4) of the Act. Thereafter, the case of the assessee had been taken up for scrutiny of assessment as provided under the first proviso to Section 17(4) of the Act by the assessing authority in view of the direction issued by Commissioner of Commercial Taxes, Thiruvananthapuram.

(3) After taking the case of the petitioner for scrutiny of assessment, the books of accounts were called for and examined by the assessing authority in depth and in detail and after verification of the books of accounts, according to the assessing authority, it was revealed apart from others, that the assessee had effected inter-state purchases of timber, but had not accounted the same in the books of accounts maintained in the regular course of business. A notice

in this regard had been issued to the petitioner under Section 19 of the Act dated 25.9.2003. The allegations made in the said notice in this regard are as under:

> "The return filed and the books of accounts produced cannot be accepted as correct and complete for the following reasons.
>
> 1) Declarations received in the office relating to your inter-state purchase of timber was verified with your books of accounts and it was found that the following purchase of timber from Sri.Jalaram Timber Depot, Shenkottai, Tamil Nadu State (Purchase of imported payinkoda logs), was not accounted in your books of accounts.
>
> a) Purchase of 415.3 CFT of imported payinkoda Timber for Rs.1,29,574/- on 7.8.2000 as per seller's invoice No.3609 dated 7.8.2000.
>
> b) Purchase of 323.6 CFT of imported payinkoda logs for Rs.1,18,123.60 as per seller's invoice No.3608 dated 7.8.2000.
>
> You are a dealer manufacturing furniture. But the above interstate purchase of timber has not been accounted in the books of accounts thus suppressing the purchase turnover to suppress the consequent manufacturer of furniture and its sales. This was a view to evade payment of tax."

(4) After receipt of the said notice, the petitioner in so far as the allegation made with regard to the inter-state purchases, in his reply, had stated as under:

> "The proposal to estimate the turnover by making an addition of Rs.25,34,275/- to the taxable turnover reported on an allegation as to unaccounted interstate purchases of Timber Logs to the tune of Rs.2,47,697/- is unwarranted as the said purchases were not effected by me and have brought to your notice that the alleged purchases might have been effected by some unscrupulous dealer by misusing my Name and Registration Numbers under the KGST and CST Acts, as soon as the said fact was put forth to us."

In the said reply it was also contended that the assessee may be afforded an

opportunity for cross-examining the alleged consignors, transporters, etc.

(5) After receipt of the reply so filed, the assessing authority has proceeded to complete the best judgment assessment. In that has stated as under:

> "For examining the veracity of the purchases, letter was issued to the consignor, M/s.Jalaram Timber Depot, Tamil Nadu, to reveal identity of the person who actually purchased the timber from them. But the consignor had not responded to the letter till now. The timber load of payinkoda timber in question was actually intercepted by the Intelligence Officer, Squad No.1, Malappuram after entry Kerala State Via Sales Tax Check Post, Aryankavu. The Intelligence Officer had actually intercepted the goods on the way. Copies of the purchase bills was also forwarded. Maharaja Wood Industries is a regular dealer, is purchasing timber from M/s.Jalaram Timber Depot, Tamil Nadu. He have purchased timber from M/s.Jalaram Timber Depot, before and after this unaccounted purchases.
>
> Further relying upon the judgment in the case of M.S.E.S. Attarwala Vs. State of Kerala (2004 KLT (3) 2005) (105 – sic.) in this case until the Hon'ble High Court of Kearla had remarked that check post declaration have evidentiary value and they cannot be merely discounted."

(6) The assessee had questioned the findings and conclusions reached by the assessing authority by filing first appeal in No.1059 of 2005. The first appellate authority has modified the order of the assessing authority to certain extent.

(7) Not being satisfied with the orders passed by the first appellate authority, the petitioner had carried the matter in second appeal before the Tribunal. The Tribunal has sustained the orders passed by the first appellate authority by rejecting the appeal.

(8) Aggrieved by the said order, the assessee is before us in this revision petition filed under Section 41 of the Act. The assessee has framed

the following questions of law for our consideration and decision. They are as under:

> "i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in confirming the addition under different heads as well as the imposition of penalty under Section 17(5A) of the KGST Act. Has not the Appellate Tribunal committed an error in observing that the alleged discrepancy had no connection with check post declaration?
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> ii) Whether on the facts and in the circumstances of the case, the addition made amounting to Rs.13,34,236/- is totally unwarranted? At any rate, is not the addition highly excessive and arbitrary?
>
> iii) Whether on the facts and in the circumstances of the case and in the light of provisions contained in Section 30 B (4), is not the penalty imposed under Section 17(5A) erroneous in law?"

(9) Dr.K.B.Mohammedkutty, learned senior counsel appearing for the petitioner, would contend that some unscrupulous dealer by making use of the assessee's name has effected inter-state purchases of the timber and the assessing authority without following the procedure prescribed under Section 30B(4) of the Act could not have levied tax on that portion of the inter-state purchases by the assessee. In support of that contention the learned counsel has taken us through the provisions of Section 30B(4) of the Act.

(10) The question of law for our consideration and decision is whether the assessing authority was justified in relying upon the check post declaration to find that the petitioner has not accounted certain inter-state purchases made by him in the regular books of accounts and thereby liable to tax under the Act. Before we advert to the contentions canvassed by the learned senior counsel, we intend to notice the observations made by a Division Bench of this Court in the case of *M.S.E.S.Attarwala* v. *State of Kerala* (2004 (3) KLT 105). In the

said decision the Court has stated as under:

> "Checkpost declaration is a piece of evidence and the authorities are entitled to place reliance on that material in appropriate cases. Of course, it may be argued that considering the limited sphere or resources within which a dealer who is a private party can successfully produce or cause the production of the alleged seller or goods or his agents situated beyond the territorial limits of the State and confront him with the check post declarations, the authorities under the Act should render all effective help within their powers to the assessee to make use of the opportunity to adduce evidence in rebuttal including the cross-examination of the declarant or other persons connected with the declaration or invoice and shall not adopt any indifferent or lethargic attitude by sitting with folded hands. If the assessee challenges the genuineness of the declaration and takes steps to establish his plea, he should be permitted to challenge the correctness of the entries made in the check post declaration. Of course, the onus of establishing that the entries made therein are incorrect or false is on the assessee."

(11) A perusal of the dicta laid down by this Court in the above decision would indicate that check post declarations are piece of evidence and authorities are entitled to place reliance on that material in appropriate cases. It is for the assessee to establish that the entries made therein are incorrect or false, etc.

(12) In the instant case, the assessing authority primarily relying upon the check post declaration had informed the assessee, by the notice issued under Section 19 of the Act dated 25.9.2003, that the assessee has effected inter-state purchases of timber from one M/s.Jalaram Timber Depot, Shenkottai, Tamil Nadu as per the receipts, though such inter-state purchases are not accounted in the books of accounts maintained by the dealer. In reply to the said allegation made in the notice, the petitioner has only denied the same and further has shifted the burden on the department to summon the consignor for the purpose of cross-examination.

(13) The assessing authority relying upon the dicta of this Court in the case of *M.S.E.S.Attarwala* has proceeded to rely upon the check post declaration and since the assessee had not produced any other evidence to support his defence pleaded in the reply, has quantified the tax liability.

(14) Under Section 30B(4) of the Act , the onus is now shifted by the legislation on the dealer or the consignee of the goods in the event of he denies the check post declaration on which reliance is placed by the assessing authority. In the instant case, as we have noticed earlier, the assessing authority relying upon the check post declaration informed the assessee that he has effected inter-state purchases from M/s.Jalaram Timber Depot, Tamil Nadu, but those purchases are not reflected in the books of accounts. The assessee by merely denying that allegation cannot escape from the net of taxation. He is expected to support his denial by appropriate and cogent evidence. In the absence of such evidence, the assessing authority would be justified in relying upon the check post declaration and then proceed to complete the assessment/re-assessment. This aspect of the matter has been properly understood by the first appellate authority as well as by the Tribunal.

(15) Having gone through the order of assessment passed by the assessing authority and the orders passed by the Tribunal, we are of the ` opinion that all the authorities under the Act as well as the Tribunal have rightly understood the true interpretation that can be given to the provisions of Section 30B(4) of the Act and accordingly has rejected the appeal filed by the assessee.

(16) In our opinion, the Tribunal has neither failed to consider the question of law nor has erroneously considered the question of law. In that

view of the matter, interference with the said order is not called for. Accordingly the revision petition filed by the assessee requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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